IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

CRL.A.No. 1912 of 2006()

SC(NDPS.)NO.7/2006 of SPL. COURT (NDPS ACT CASES), THODUPUZHA

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APPELLANT: ACCUSED

VEERAN, S/O.ALAKU MOOPPANAR,
HOUSE NO.215, WARD NO.5 OF BAISONVALLY PANCHAYATH,
MUTTUKADU KARA, KONGINICITY.

BY ADVS. SRI.C.M.TOMY
SRI.K.J.JOSEMON

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1912 OF 2006

Dated this the 27th day of November, 2006

JUDGMENT

The appellant is the accused in S.C.(NDPS) No.7 of 2006 on the file of the Special Judge for N.D.P.S. Cases, Thodupuzha. The appellant faced trial for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the N.D.P.S. Act").

2. The prosecution case is that on 11.4.2005 at 4 P.M. on getting reliable information that ganja was being transported in a jeep along Madurai – Munnar NH-49, PW.1, the Sub Inspector of Police, Santhanpara along with the police party waited at Mullanthandu junction stopped the jeep and while conducting search, the appellant carrying a bag on his shoulder jumped out of the jeep and ran towards Pooppara side. He was apprehended by the police and on conducting a search it was found that the bag contained 1.350 kgs. of dried ganja (cannabis). It is the further case of the prosecution that PW.1 arrested the appellant and seized the contraband articles as per Ext.P8 seizure mahazar prepared in the

presence of independent witnesses. The same was weighed as per law and 50 gms. of ganja was taken and sent for chemical analysis. Thereafter the appellant along with the contraband articles were produced before the Judicial First Class Magistrate, Thodupuzha and the learned Magistrate directed to produce the appellant as well as the contraband articles seized from him before the N.D.P.S. Court. PW.6, Circle Inspector of Police, Devikulam continued the investigation and PW.7, Circle Inspector of Police, Devikulam laid the final charge. To prove the case against the appellant, the prosecution examined Pws.1 to 7 and relied on Exts.P1 to P15. Mos.1 to 5 were also produced. No oral or documentary evidence was adduced on the side of the defence. The appellant when questioned under Section 313 Cr.P.C. denied commission of any offence as alleged by the prosecution. Relying on the oral and documentary evidence adduced by the prosecution, the trial court found the appellant guilty of the offence alleged against him, convicted him thereunder and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of six months. The benefit under Section 428 Cr.P.C. was also allowed. The above conviction and sentence are challenged in this appeal.

3. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel for the appellant raised two main grounds: (i) the trial court went wrong in relying on the evidence adduced by the prosecution to find the appellant guilty of the charges and (ii) PW.1 had not complied with the provisions of Section 50 of the N.D.P.S. Act while conducting search of the body of the appellant and hence, the entire finding entered by the trial court is vitiated.

5. The learned Public Prosecutor, on the other hand, submits that the trial court was right in accepting the evidence of the prosecution witnesses and that the conviction and sentence passed against the appellant are fully justified.

6. The question to be decided in this appeal is whether the evidence adduced by the prosecution is enough to justify the conclusion arrived at by the trial court.

7. PW.1, the Sub Inspector of Police, Santhanpara who detected the crime deposed before the court below that he went to the scene of

occurrence on getting reliable information that ganja was being transported in a jeep. He also stated that he caught the appellant who jumped out of the jeep and ran towards Pooppara and found 1.350 kgs. of dried ganja in the bag which the appellant was carrying on his shoulder. PW.1 further stated that he seized the contraband articles in the presence of independent witnesses and prepared Ext.P8 seizure mahazar. Sample was taken and sent for chemical analysis and thereafter he arrested the appellant and produced him before the court along with the contraband articles. Ext.P15 is the chemical analysis report which shows that the sample contained 48.65 gms. of dried ganja. PW.1 also stated that he had reported the matter to his superior officer. PW.2 was examined to prove the arrest of the appellant and the seizure of the contraband articles. PW.2 stated before the court below that he had seen the appellant being apprehended by two police constables. He is silent about the presence of PW.1 at the scene of occurrence. PW.2 further stated that the police constables seized the contraband articles from the bag carried by the appellant. He gave the same evidence even on cross-examination. The evidence of Pws.1 and 2 with regard to arrest, search and seizure appears to be contradictory and there is no evidence to show that PW.1 was present at the scene of occurrence. PW.3 was the person who weighed the dried ganja, PW.4 was the driver of the jeep in which the appellant was travelling. He also did

not support the prosecution case. He stated that he did not witness seizure of any dried ganja from the appellant. He also stated that the appellant frequently travelled in his jeep. PW.5 was the Village Officer who prepared the site plan. PW.6 continued the investigation and PW.7 laid the final charge. Both these witnesses stated that they had verified the investigation conducted by PW.1, but had not conducted any further investigation.

8. This Court is also inclined to consider the case set up by the appellant when he was questioned under Section 313 Cr.P.C. The appellant had a definite case before the court below that he was falsely implicated in the crime only because of the reason that he was an accused in C.C.No.324 of 202. The appellant further stated that he was arrested by the police constables of Santhanpara Police Station and not by PW.1 and that he had seen PW.1 only at the police station. He also stated that Ext.P8 mahazar was not prepared by PW.1 at the scene of occurrence.

9. Taking into account the case set up by the appellant and the fact that the evidence of PW.2 does not corroborate with that of PW.1, this Court is of the view that the prosecution failed to prove the case against the appellant beyond reasonable doubt. Hence, the benefit of doubt has to

be given to the appellant.

10. With regard to the contention of the learned counsel for the appellant that PW.1 had not complied with the provisions of Section 50 of the N.D.P.S. Act, it is seen that the trial court had already considered that question and came to the conclusion that Section 50 of the N.D.P.S. Act as such cannot be applied to the facts of the case as alleged by the prosecution. The trial court placed reliance on the decision of the Apex Court reported in **State of H.P. v. Pawan Kumar, 2005(3) K.L.T. 195 (SC)** in which the Apex Court had taken the view that contraband articles seized from a bag, briefcase or any such article or container possessed by the accused cannot be considered as search made under Section 50 of the N.D.P.S. Act since search of a bag or such container cannot be claimed as search of a person. The case of the prosecution was that the appellant was carrying MO.5 bag on his shoulder and the contraband articles were seized from the bag. In the above circumstances, non-compliance of Section 50 of the N.D.P.S. Act is not fatal to the prosecution in this case and this ground need not be considered as this Court has already found that the prosecution failed to prove the case against the appellant beyond reasonable doubt.

11. In the above circumstances, this Court is of the view that the findings entered by the trial court and the conviction and sentence ordered against the appellant – accused in S.C. (NDPS) No.7 of 2006 on the file of the Special Judge for N.D.P.S. Cases, Thodupuzha are not sustainable. Hence, the conviction and sentence ordered against the appellant are set aside and the appellant is acquitted. The appellant shall be released forthwith, if he is not wanted in connection with any other case.

The Crl. Appeal is allowed as above.

(K.THANKAPPAN, JUDGE)

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